

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Darrell Jenkins, #191569,)	
)	
Plaintiff,)	Civil Action No. 6:10-2782-HFF-KFM
)	
vs.)	<u>REPORT OF MAGISTRATE JUDGE</u>
)	
Warden Willie L. Eagleton, et al.,)	
)	
Defendants.)	
_____)	

This matter is before the court on the plaintiff's motion for entry of default (doc. 38). The plaintiff, a state prisoner proceeding pro se, filed his complaint seeking relief pursuant to Title 42, United States Code, Section 1983. He alleges the defendants have unlawfully confined him in "punitive segregation."

Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Local Rule 73.02(B)(2)(d), D.S.C., this magistrate judge is authorized to review all pretrial matters in cases filed under Title 42, United States Code, Section 1983, and submit findings and recommendations to the District Court.

The plaintiff contends that the defendants failed to timely answer certain discovery requests he served on December 28, 2010. Thus, he claims he is entitled to default against the defendants. Entry of default is appropriate when a party fails to timely plead. Fed.R.Civ.P. 55. Here, there is no allegation the defendants failed to timely answer the plaintiff's complaint. Furthermore, a review of the docket shows that the case was filed in state court, and the defendants timely removed the case to federal court and thereafter timely answered. Accordingly, the plaintiff's motion for entry of default should be denied.

Construing the plaintiff's motion as a motion to compel, it should also be denied. Counsel for the defendants was served with "Plaintiff's Motion for Production of Documents Pursuant to Federal Rules of Civil Procedure 34" on December 21, 2010. The defendants served responses to the plaintiff on January 21, 2011. This court has reviewed the defendants' discovery responses (doc. 38-1) and finds that they are adequate. Furthermore, the plaintiff's motion to compel is untimely. See Local Civil Rule 37.01 DSC ("Motions to compel discovery must be filed within twenty-one (21) days after receipt of the discovery response to which the motion to compel is directed . . .").

Wherefore, based upon the foregoing, it is recommended that the motion for entry of default (doc. 38) be denied.

IT IS SO RECOMMENDED.

s/Kevin F. McDonald
United States Magistrate Judge

May 20, 2011

Greenville, South Carolina